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August 10, 2018

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: SEC Proposals S7-07-18 (Regulation Best Interest); S7-08-18 (Form CRS Relationship Summary); and S7-09-18 (Interpretation Regarding Standard of Conduct for Investment Advisers)

Dear Mr. Fields:

T. Rowe Price[1] appreciates the opportunity to comment on the SEC's proposals regarding the standards of conduct for broker-dealers and investment advisers (collectively, the "**Proposals**"). In general, we are very pleased that the SEC has moved forward with this initiative. Given the recent efforts by the Department of Labor and various state authorities related to standards of care and disclosure obligations, there is a significant risk of regulatory fragmentation in this area and we are encouraged that the SEC, as the primary regulator for broker-dealers and advisers, is taking the lead.

We strongly support the proposed standard for broker-dealers in Regulation Best Interest ("**Reg BI**"). It is aligned with the general principles outlined in our October 12, 2017 comment letter responding to Chairman Clayton's request for input, in which we called for a more stringent broker-dealer standard that includes an express duty of care, enhanced disclosure, and more protection against material conflicts of interest across both retirement and non-retirement accounts. In all of these respects, we believe that Reg BI is a necessary enhancement to the current broker-dealer standard.

We have some concerns, however, with each release. As explained more fully below, we believe that each of the three releases could be improved with modest changes:

- ***Reg BI:*** We are concerned that there is language in the Reg BI release that could be interpreted as imposing a significant hurdle on the recommendation and use of proprietary funds. There is a range of commentary in the Reg BI release relating to proprietary funds, and while it is clear that the SEC did not intend to prohibit the

[1] T. Rowe Price Associates, Inc. ("**TRPA**") and its advisory affiliates provide investment management services to numerous individuals, institutions, and investment funds, including the T. Rowe Price family of mutual funds. As of June 30, 2018, T. Rowe Price Associates Inc. and its advisor affiliates managed $1.04 trillion in assets. T. Rowe Price Investment Services, Inc. ("**TRPIS**") is a registered broker-dealer offering transaction services in stocks, bonds, ETFs and mutual funds, and acts as the principal underwriter of T. Rowe Price U.S. mutual funds.

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recommendation of proprietary funds, it is not entirely clear what types of conflict mitigation is expected in this context. We believe that the SEC should provide more explicit guidance that clarifies the appropriateness of disclosure in addressing conflicts arising from recommendations made based on a universe of solely proprietary funds.

- ***Form CRS:*** While we understand and support the goals of Form CRS, we think there are certain situations that do not warrant a Form CRS. We also recommend certain changes to proposed Form CRS: (a) so that it can more effectively accommodate organizations offering a range of business models; and (b) so that the firm has flexibility to tailor the disclosure to make it clearer and more readable without potentially confusing investors.

- ***Advisers Act Release:*** While we commend the SEC for maintaining the distinction between the fiduciary duty applicable to advisers and the standard applicable to broker-dealers, we are concerned that parts of the SEC's proposed interpretation on the limits of disclosure and informed consent are not consistent with judicial precedent, common law concepts, and industry understanding and practice.

Before explaining our specific comments, we think it is particularly important to provide some background on T. Rowe Price's current retail services given that the Proposals, at their core, are intended to address commission-based broker-dealers and fee-based investment advisers. Although T. Rowe Price has both broker-dealer and investment adviser entities that would be subject to the rules, our business model does not fit neatly into this traditional framework. For example, our funds do not have sales loads, our broker-dealer representatives do not earn commission-based compensation, and our broker-dealer does not use other direct forms of incentive compensation tied to the sale of funds or other products.[2] One of our broker-dealer's key functions is serving as principal underwriter to T. Rowe Price's 129 mutual funds.[3] Our adviser entities may provide retail-oriented advice services, almost all of which solely involve the use of T. Rowe Price's proprietary mutual funds where the client bears the costs of the underlying fund(s) but does not pay any separate management or advisory fee for the advice services.[4] These advice services may involve investment discretion or recommendations, and use technology-based tools to varying degrees to help determine the appropriate T. Rowe Price mutual fund(s) for a particular client based on objective criteria. Oversight and periodic reviews help ensure the objectivity of the investment advice delivered through these services. Compensation for adviser representatives does not vary based on his or her recommendations or investment decisions.

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[2] To the extent TRPIS has selling agreements with other broker-dealers, the sales compensation is in the form of 12b-1 fees paid directly by the relevant TRP mutual funds.

[3] As of June 30, 2018.

[4] There is one exception. Our Private Asset Management group, which provides our highest levels of service and customization to retail clients, charges a separate fee for advice.

Expand Reg BI's discussion of proprietary funds.

In our October 12, 2017 letter, we noted the importance of ensuring that the rules remain workable for business models based on proprietary funds, consistent with the explicit statement under Section 913 of the Dodd-Frank Act that a best interest standard should not preclude the sale of only proprietary or other limited range of products. Although Reg BI indicates that recommending proprietary products or a limited product range would not be "per se" prohibited, other parts of the release (which are not specific to proprietary funds or limited product range) note that a broker-dealer should consider reasonable alternatives when determining whether it has a reasonable basis for making its recommendations. For purposes of Reg BI's conflict of interest obligation, the Commission also indicates that conflicts arising from financial incentives include sales of proprietary products or services or products of affiliates, meaning that those conflicts would need to be mitigated in addition to being disclosed. The Commission's concerns in this regard appear to relate primarily to "open-architecture" environments where a firm can recommend or select third party funds and/or securities as well as proprietary products. These scenarios may also involve variable compensation to the representative, creating incentives to recommend proprietary products over other investments.

We believe that the SEC should expand upon this discussion with respect to recommendations made solely from a proprietary universe of funds. The nature of the central conflict in this context is fundamentally different than in an open architecture environment and more appropriately dealt with through clear disclosure than mitigation techniques. We would also suggest that the SEC explicitly state that any conflicts arising from the differences in fees charged by various types of funds (*e.g.*, higher management fees on equity funds than fixed income funds) can be fully addressed without the need to make the fees uniform.

Improve the flexibility of Form CRS.

The Form CRS release outlines various goals of the proposed relationship summary. The Commission notes that the summary would alert retail investors to important information (such as fees, services, conflicts, and disciplinary history) for them to consider when choosing a firm and financial professional, and also prompt them to ask informed questions. In addition, it notes the content in Form CRS would facilitate comparisons across firms.

While we agree with these goals and recognize the importance of communicating key information to retail investors in a readily digestible way, on balance, we are concerned that Form CRS, as proposed, will not be an effective communication tool for advisers and/or broker-dealers with business models similar to ours. Much of the content of the Form is educational and should be on the SEC's website as neutral comparative information, as opposed to in a firm's individual Form CRS. We believe the relationship summaries provided to clients and prospects should instead be focused on the specific services provided by the firm, rather than potential services offered by other firms. Because Form CRS as proposed is not integrated into a more detailed disclosure document, we think it will be difficult for it to facilitate layered disclosure in a cohesive way. Instead, we strongly prefer the alternative approach suggested by the Investment Adviser Association ("**IAA**") in its comment letter. The IAA alternative ties the

relationship summary to the adviser's Form ADV brochure. In the case of broker-dealers, the IAA recommends requiring a relationship summary at the beginning of a new standalone written disclosure document similar to the Form ADV brochure. Of course, given that such a disclosure document would be entirely new for broker-dealers, it would be necessary to build in an ample time-frame for implementation and the Commission would need to establish specific content requirements for what broker-dealers would need to include.

We are also concerned that the Form's rigid format will detract from its ability to meaningfully convey intended information and that the Form will not effectively reduce confusion among retail investors or provide useful comparisons. For example, Form CRS is limited to 4 pages (some of which is consumed by standard questions and language) and all of the firm's advisory and brokerage services are to be captured in one relationship summary. For firms such as ours where our broker-dealer, as well as our adviser entities, offer a range of services, mandating a single Form CRS for each registered entity that covers all of its retail services is not conducive to effective disclosure for investors.[5]

Instead, firms should have the option to prepare and provide separate relationship summaries for different business lines, programs, account types, and/or services.[6] The IAA approach contemplates this flexibility. An individual may not be a candidate for all of the adviser's or broker-dealer's retail service offerings based on information the individual provides or his/her stated preferences. It does not seem useful to mandate an individual receive information on irrelevant services that may create confusion and detract from the focus on the actual service to be provided. In our view, giving the financial organization discretion to determine which Form CRS it provides to a particular retail investor is a better framework.[7]

Exempt principal underwriters of mutual funds from Form CRS.

It appears Form CRS would apply to retail investors when they invest directly in mutual funds, such that the fund's principal underwriter, as a broker-dealer, would have to provide a Form CRS. Although the principal underwriter plays an important role in a mutual fund's operation by performing various activities with respect to the distribution of fund shares such as prospectus delivery or answering basic questions about the fund, the principal underwriter does not have the kind of relationship with the investor that warrants a Form CRS and does not engage in activities that create the types of conflicts that Form CRS was intended to address. In selecting funds, investors consider various factors, such as the fund's investment strategy and principal risks, its manager(s), fees, and performance – all of which are described in the fund's

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[5] We currently have 6 distinct services for providing retail recommendations or investment management and anticipate offering additional services in the future.

[6] This question is specifically posed on page 27 of the Form CRS release.

[7] If the Commission is concerned that this framework could lead to incomplete disclosure, the Form CRS could have hyperlinks to the firm's or its affiliates' other relationship summaries, as well as the SEC's website for educational content, along with a statement that these other offerings may not necessarily be available to or relevant for the investor.

prospectus. Nothing in a principal underwriter's Form CRS would meaningfully add to that disclosure.

We also note that this would be burdensome and costly. As of December 31, 2017, T. Rowe Price had approximately 1.4 million individual direct mutual fund shareholders. Requiring the distribution of a Form CRS to these shareholders would impose a significant and costly burden, while generating confusion and no demonstrable benefit to shareholders.

Harmonize the concept of "retail" in Form CRS and Reg BI.

In general terms, Reg BI and Form CRS are intended for the protection of retail persons, with Reg BI further narrowed to apply only to scenarios where a broker-dealer is providing recommendations of securities transactions or investment strategies involving securities. However, the concepts of "retail" are not fully aligned as Reg BI utilizes the term "retail customer" whereas Form CRS uses "retail investors."[8] The Commission requests comment on whether it should instead use the definition of "retail investor" for both rulemakings. In our view, it should.

Unlike the "retail customer" definition that incorporates references to legal representatives, the term "retail investor" is more consistent with the retail focus of Reg BI and Form CRS because "retail investor" is limited to natural persons. Reg BI and Form CRS should not apply to services provided to banks, other registered broker-dealers or advisers, insurance companies, or other financial institutions that would have an independent fiduciary obligation, even if the underlying clients or customers are retail investors.

Using the definition of "retail investor" for both rulemakings would also clarify the application of rules in the retirement plan context. We believe that when a broker-dealer or adviser customer or client is a retirement plan, plan sponsor, other fiduciary or plan consultant, the services rendered to the customer or client should not be considered retail activities for purposes of either Reg BI or Form CRS.[9] Of course, if an individual chooses to retain a broker-dealer or adviser to provide recommendations or management regarding his/her retirement plan accounts, the standard of conduct under Reg BI or the Advisers Act, as appropriate, should apply along with Form CRS.

In cases where a plan fiduciary selects a broker-dealer or adviser to provide such services to its plan participants, the participants should be owed the relevant standard of conduct, but we

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[8] "[R]etail customer" is defined 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. On the other hand, "retail investor" means a client or prospective client who is a natural person (an individual). This term includes a trust or other similar entity that represents natural persons, even if another person is a trustee or managing agent of the trust.

[9] We could see the need for some limited exceptions to this general rule. For example, the SEC may wish to consider whether individual 401(k) plans, non-ERISA individual 403(b) custodial accounts, and IRAs (including, but not limited to SEP and SIMPLE IRAs) should be considered retail for purposes of Reg BI and Form CRS.

do not think Form CRS should apply. ERISA and governmental plans are already subject to extensive disclosures to participants and rules related to conflicts. Consequently, a Form CRS in this context would be duplicative of existing disclosures and cause potential confusion, without providing any additional benefits.

As an adviser, broker-dealer and plan recordkeeper with an extensive client base that includes direct retail clients, intermediaries and retirement plans, it is important to us for the Commission to clarify these issues. Doing so would fine tune the Reg BI and Form CRS requirements so that they only apply to the audiences we believe the Commission truly meant to reach and also spare firms from creating complex operational processes and devoting significant resources where the protections of the proposal are not needed.

Reaffirm disclosure and informed consent as bedrock principles for addressing adviser conflicts.

Overall, we are pleased that the Commission did not attempt to create a single standard for broker-dealers and investment advisers, but instead preserved the Advisers Act fiduciary duty, which has served both advisers and clients well. We are concerned, however, that part of the proposed interpretation's statements on conflicts may amount to new requirements, despite the Commission's view that the release is generally consistent with advisers' current understanding of the practices necessary to satisfy their fiduciary duties.

The Commission indicates that there may be circumstances when it is not enough to disclose the existence of a conflict and infer or obtain consent. Specifically, the release cites scenarios where: (a) the client did not understand the nature and import of the conflict; or (b) the conflict or its associated facts are too complex or extensive. The Commission goes on to say that in cases where full and fair disclosure and informed consent is insufficient, it expects the adviser to eliminate the conflict or adequately mitigate the conflicts.

While we do not believe that any of the conflicts in our business model would rise to that level, we are nevertheless concerned with the suggestion, which is inconsistent with caselaw and precedent, that full and fair disclosure and informed consent may be insufficient.[10] In addition to the challenges firms would face in terms of assessing whether they have any conflicts which the Commission might unexpectedly classify as inappropriate for disclosure and consent, the Commission has not provided any parameters for an adviser to gauge whether a conflict has been adequately mitigated.[11] We are also concerned about the obvious difficulties associated with how the Commission might attempt to interpret and enforce whether a certain client understood a particular conflict. Unless an adviser knows or has reason to know that a client does not understand a disclosure, it should not be expected to validate a particular client's comprehension

[10] See comment letters from the Asset Management Group of the Securities Industry and Financial Markets Association, Investment Adviser Association, Investment Company Institute, and Money Management Institute for further details and legal analysis.

[11] Under Reg BI, there are similar lack of clarity issues in terms of what amounts to sufficient mitigation and a need for the Commission to articulate in practical terms how a firm determines material conflicts versus those arising from financial incentives.

of a conflict. To the extent an adviser has provided full and fair disclosure through its ADV brochure or otherwise, and thereafter the client has entered into or continued to retain the adviser, the conclusion should be that the client made an informed decision and consented to the conflicts.[12]

Clarify the Advisers Act interpretation regarding institutional versus retail clients.

Our other primary concern with the proposed interpretation is that it does not adequately distinguish between fiduciary duties owed to retail and institutional clients. This is most evident in the duty of care discussion about expecting the adviser to make reasonable inquiry into its client's investment profile and to provide personalized advice that is in the client's best interest based on such profile. As a large adviser with many types of retail and institutional clients, it is important that we have flexibility regarding how we carry out the duty of care and that this duty be a principles-based concept that works effectively in both institutional and retail settings. The release's notion of an investment profile (*e.g.*, the client's financial situation, sophistication, and experience) in connection with the duty of care is appropriately retail-centric. We urge the Commission to explicitly note that it is not applicable for institutional clients. We believe that the general principles established through judicial precedent and industry standards is that the advisory relationship with an institutional client can be defined through the advisory agreement or other similar understanding between the institutional client and the adviser. This principle should be clearly recognized in the Advisers Act interpretation.

Embrace technology and modern communication principles.

Broadly speaking, we see greater electronic communication as critical to meeting client expectations and improving their end-to-end experience. Consistent with investor trends that favor the use of digital technology, we believe that modern delivery methods and electronic access to documentation can improve the user experience by efficiently linking documents, providing layered disclosure, and facilitating use of assistive technology for those with disabilities or translation needs. Along these lines, we are pleased that the Commission recently finalized Rule 30e-3 that will encourage electronic access to mutual fund shareholder reports. More broadly, we are happy that the Commission is evaluating greater use of technology and electronic communication as an important and significant part of its initiative to enhance investment company disclosures. We support all of these efforts, and indeed hope that the Commission will re-examine and modernize the guidance on electronic delivery with respect to all required regulatory documents.

The Commission should craft Form CRS delivery obligations in ways that build upon these ideas. For example, if an email address is on file with the firm, we believe that the default approach for satisfying the disclosure obligations of Form CRS and Reg BI should be to provide access via an electronic link, with no requirement to obtain consent. In cases where no email

[12] The notion of full and fair disclosure is also related to and complemented by the investor protections established under the anti-fraud provisions in Sections 206(1) and (2) of the Advisers Act.

address is on file with the firm, we think a notice and access protocol akin to Rule 30e-3 is appropriate.

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Thank you again for the opportunity to provide our perspectives on these important issues. Please do not hesitate to contact us if you would like to discuss our comments in greater detail.

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