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August 6, 2018

Via Email to: rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090
Attn: Chairman Jay Clayton

Re: Proposed Regulation Best Interest under the Securities Exchange Act of 1934, as amended ("Regulation Best Interest Release") and Proposed Form CRS and Certain Labeling Rules

Ladies and Gentleman:

State Farm Mutual Automobile Insurance Company, headquartered in Bloomington, Illinois, with its subsidiaries (collectively, "State Farm") writes in response to the requests for comment by the Securities and Exchange Commission (the "SEC" or "Commission") in connection with (i) proposed Regulation Best Interest under the Securities Exchange Act of 1934, as amended ("Regulation Best Interest Release") and (ii) proposed Form CRS and certain labeling rules ("Form CRS Release," and together with the Regulation Best Interest Release, the "Releases" or the "Proposals"). State Farm applauds the Commission for taking the lead in promulgating standards of conduct for broker-dealers, investment advisers and their associated persons. As the primary regulator of these financial services providers, the SEC is the appropriate regulator for developing and regulating standards of conduct for the securities industry and enforcing these standards. With that in mind, we encourage the Commission to coordinate with the States as well as other federal regulatory agencies, as it moves forward with final rulemaking to ensure that the Proposals, as adopted, appropriately balance investor protection and investor choice in the retail investment advisory services sector.

State Farm includes property and casualty insurance companies, life insurance companies (State Farm Life Insurance Company and State Farm Life and Accident Assurance Company), a broker-dealer (State Farm VP Management Corp. ("SFVPMC")), a registered investment adviser (State Farm Investment Management Co.), and a federally chartered savings bank (State Farm Bank). State Farm is the largest insurer of automobiles and, through its subsidiaries, the largest insurer of homes and one of the largest issuers of individual life insurance policies in the United States. State Farm Mutual Automobile Insurance Company is organized as a mutual insurance company—it does not have shareholders.

State Farm's business focuses on serving Main Street investors, who are individuals, families, and small businesses, especially those in the middle-market. State Farm's customers include a significant portion of low-to-moderate-income customers, whose financial services needs are often underserved by other organizations, as well as a number of more affluent customers. In its 96 years of business, State Farm has been proud to help individuals across the United States manage the risks of everyday life, recover from the unexpected, and realize their dreams. State Farm has been able to do this by offering products and services, including insurance, savings and financial products and services, through more than 19,000 exclusive, independent contractor agents. Over time, it is these State Farm agents, who operate in storefront locations in metropolitan areas and small and mid-size towns throughout America, who typically develop long standing ties to the customers in their communities.

State Farm's business model is based on its ability to offer customers "one stop shopping" for a full range of financial services products. Not only do State Farm agents market, solicit and service insurance products, but approximately 12,000 of its agents have also become registered representatives of SFVPMC in order to serve existing customers with securities products. We have helped build the business through registered representatives meeting individually with existing State Farm customers to discuss how mutual funds can provide the customer with choices to meet his or her particular general, retirement and educational savings needs. Products and services offered by or through State Farm, including mutual funds, variable products, and 529 college savings plans are intended to be flexible enough to meet the needs of a range of retail customers, from affluent investors to modest savers.

In many cases, a State Farm agent may be the first representative to discuss with a consumer the importance and benefits of saving for retirement and education expenses. Because State Farm customers want the ability to choose between a range of financial services – from pay-as-you-go services to ongoing advisory relationships, State Farm agents may also offer investment advisory accounts to qualifying customers. The financial products and services State Farm offers or will offer are intended to be extensive enough to meet the needs of each investor, yet simple enough to be easily understood.

I. EXECUTIVE SUMMARY

State Farm appreciates the opportunity to comment on the Proposals, and generally supports the Proposals and the SEC's leadership role on these important issues for investors and the securities industry; however, we do have several specific comments, summarized below[1]:

"Best Interest" Standard Generally

State Farm supports the SEC's proposal to impose a "best interest" standard of conduct on broker-dealers rather than proposing a uniform fiduciary duty. Nevertheless, State Farm believes that additional clarification regarding certain elements of proposed Regulation Best Interest is needed prior to the adoption of any final rules.

State Farm supports the Commission's principles-based approach to the standard of conduct, rather than mandating prescriptive requirements for broker-dealers when making recommendations to retail customers. Nevertheless, State Farm recommends the SEC provide specific examples of scenarios in which a broker-dealer would be viewed as meeting its best

[1] Terms not defined in this Executive Summary have the meaning set forth in Sections II through IV, below.

interest obligation to retail customers. To provide certainty to broker-dealers in conducting their business and developing policies and procedure to comply with Regulation Best Interest, State Farm also believes the SEC should expressly state in a preamble to Rule 15l-1 under the Securities Exchange Act of 1934, if adopted, that, absent evidence of a contrary intent, a broker-dealer will not be deemed to violate Rule 15l-1 if it demonstrates that it made good faith and reasonable efforts to comply with the Disclosure Obligations, Duty of Care, and Conflict of Interest Obligations of Rule 15l-1. Such a safe harbor would provide broker-dealers with a workable standard and a level of certainty as to their ability to tailor their interactions with retail customers without being deemed to violate their best interest obligation.

Best Interest Standard – Duty of Care & the Care Obligation

With respect to the Duty of Care, State Farm believes the Commission should strike the term "prudence" from any final rule due to the lack of a definition of that term in Regulation Best Interest or otherwise under the federal securities laws. The absence of a definition of a key component of the Care Obligation will create, rather than eliminate, uncertainty for retail investors as well as broker-dealers regarding the scope of the best interest obligation. If the SEC used the term "prudence" to convey a specific obligation of broker-dealers, the SEC should make its intention known, explain what the scope of the obligation is intended to be, and provide an opportunity for public consideration and comment. The meaning of "prudence" for these purposes should not be left to be established through litigation and its attendant costs, lack of uniformity and uncertainty.

State Farm further requests that the SEC provide additional guidance regarding the circumstances under which a broker-dealer would "have a reasonable basis for believing that the recommended transaction or investment strategy is in the best interest of the retail customer and does not put the financial or other interest of the broker-dealer before that of the retail customer" (the "Reasonable Basis Determination"). As with the term "prudence," State Farm requests the SEC: (i) clarify, in any final rulemaking, any differences between existing suitability obligations and the Reasonable Basis Determination (if any) and (ii) provide examples of scenarios where a broker-dealer making recommendations from a limited universe of investment options would be viewed as satisfying the Reasonable Basis Determination.

Best Interest Standard – Conflicts of Interest: General

In addition, as part of any final rulemaking, State Farm requests that the General Conflict and Financial Incentive Conflict categories of conflicts of interest set forth under the Care Obligation be consolidated in favor of a single category related only to Financial Incentive Conflicts. Based on a plain reading of the proposed definition of a "material" conflict of interest (*i.e.*, whether a reasonable person would expect that the conflict of interest might incline a broker-dealer to make a recommendation that is not disinterested), there appear to be few – if any – material conflicts of interest that are not Financial Incentive Conflicts. Accordingly, State Farm believes the General Conflict category is redundant and should be eliminated.

Best Interest Standard – Conflicts of Interest: Mitigation versus Elimination

The SEC should provide greater guidance regarding the types of material financial incentives that must be eliminated and that cannot be addressed through disclosure and mitigation. In certain cases, broker-dealers have no ability to eliminate conflicts of interest arising from financial incentives. For example, as discussed in Section II.E.2., below, broker-dealers do not set

fees or rebates paid by various issuers (*e.g.*, mutual fund complexes) to distribute their products. Broker-dealers can, however, levelize compensation paid to their registered representatives so that individuals are not rewarded for selling particular securities. Accordingly, State Farm believes that as part of any final rulemaking, the SEC should make clear that mitigation (and not elimination) of conflicts of interest is sufficient in circumstances when the broker-dealer takes reasonable steps to remove incentives for its registered representatives to recommend particular securities transactions based on compensation to them or their firms.

Best Interest Standard – Private Right of Action

State Farm supports the SEC's conclusion that Regulation Best Interest does not create a new private right of action.

Form CRS – General

Although State Farm supports the provision of Relationship Summaries to retail customers and clients, additional clarification regarding certain elements of proposed Form CRS is needed prior to the adoption of any final rules. Specifically, State Farm recommends the SEC, as part of any final rulemaking: (i) make clear the specific "material" conflicts of interest that must be disclosed; (ii) provide express guidance as to the use and impact of the "layered" disclosure approach on the nature and scope of required disclosures (including to avoid presenting disclosures that are materially inaccurate or misleading) in a Relationship Summary; and/or (iii) exclude from the Page Limit the list of key questions for retail investors to ask a firm's financial professional(s).

Form CRS – Timing of Delivery

State Farm supports the SEC's proposed flexible standard for initially delivering a relationship summary ("Form CRS") to a retail investor (the "RS Delivery Requirement"). However, State Farm believes that the RS Delivery Requirement as applied to broker-dealers, including dually-registered broker-dealers and investment advisers, fails to account for the practical realities of establishing a new customer relationship. Accordingly, the SEC should revise the delivery requirements set forth in the Form CRS Release to clarify that Form CRS: (i) must be delivered by a broker-dealer no later than the time a retail investor engages the broker-dealer's services, but that delivery of a Relationship Summary immediately preceding the time the broker-dealer delivers an investment recommendation would be deemed to satisfy the broker-dealer's delivery requirement with respect to new retail investors; and (ii) must be delivered by a dual-registrant at the earlier of delivering an investment recommendation or the time a retail investor opens an account with the firm.

Form CRS – Requirements for Investment Advisers

With respect to investment advisers' obligation to deliver Form CRS, State Farm believes that investment advisers should be required to include in their Relationship Summaries only those disclosures that are not otherwise available (provided that a representative heading or introductory statement and a hyperlink to such disclosures are provided in the Relationship Summary).

Labeling Rule

State Farm requests the SEC, as part of any final rulemaking, remove the requirement that financial professionals be prohibited from using the terms "adviser" or "advisor" in certain

circumstances (the "Labeling Rule"). State Farm does not dispute, in this letter, the SEC's conclusion that it is possible retail investors may experience confusion regarding the standard of conduct owed to such investor by an investment adviser or a broker-dealer. However, for the reasons set forth in Section IV.A, State Farm strongly disagrees with the SEC's conclusion that "Form CRS is not a complete remedy for investor confusion."

To the extent the SEC declines to remove the Labeling Rule from any final rulemaking, State Farm does not believe that the use of "advisor" or "adviser" by Dual-Hatted Persons should be limited only to circumstances when such person is providing investment advice on behalf of the investment adviser. Rather, the SEC should expressly state, as part of any final rulemaking, that a Dual-Hatted Person would be permitted to use the term "advisor" or "adviser" in all interactions with retail investors, irrespective of whether such Dual-Hatted Professional is providing investment advisory or brokerage services to a particular retail investor in a particular interaction; provided that the Dual-Hatted Person provides plain-English disclosure of the capacity in which he or she is acting and the scope of services provided.

II. REGULATION BEST INTEREST

A. Introduction

Regulation Best Interest would require a broker-dealer and its associated persons (*i.e.*, natural persons) to act in the best interest of a retail customer when making recommendations, without putting their own financial or other interests ahead of the customer. The SEC did not propose to define "best interest," but instead defined how the obligation is satisfied. As proposed, a broker-dealer would satisfy its best interest obligation if the broker-dealer or natural person who is an associated person of the broker-dealer:

(i) reasonably discloses prior to or at the time of the recommendation to the retail customer, in writing, the material facts relating to the scope and terms of the relationship with the retail customer and all material conflicts of interest that are associated with the recommendation ("Disclosure Obligations");

(ii) in making the recommendation, exercises reasonable diligence, care, skill, and prudence to: (a) understand the potential risks and rewards associated with the recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers; (b) has a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks and rewards associated with the recommendation; and (c) has 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 ("Duty of Care");

(iii) 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 ("Material Conflicts Obligation"); and

(iv) 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. ("Financial Conflicts of Interest Obligation," together with the Material Conflict of Interest Obligation, the "Conflict of Interest Obligations").

State Farm supports the SEC's proposal to impose a "best interest" standard of conduct on broker-dealers rather than proposing a uniform fiduciary duty. First, a best interest standard builds on the existing suitability obligation of broker-dealers to create a higher standard of conduct. And, second, as Chairman Jay Clayton and SEC Division of Trading and Markets Director Brett Redfearn have noted, establishing a new "best interest" obligation provides an opportunity for the SEC to clearly set the scope and parameters of this new standard of conduct for broker-dealers, and to reflect broker-dealers' business model and activities rather than trying to adapt and interpret a traditional investment adviser standard of conduct for broker-dealers.

Nevertheless, State Farm believes additional clarification regarding certain elements of proposed Regulation Best Interest is appropriate prior to the adoption of any final rulemaking.

B. State Farm supports a principles-based standard for defining the "best interest" standard of conduct.

State Farm supports the SEC's approach to provide a principles-based standard, rather than a specific definition or series of prescriptive steps, for determining whether a broker-dealer is acting in the "best interest" of a retail customer when making a recommendation. State Farm believes that a prescriptive or rules-based approach could require industry participants to adhere to a conceptual framework that is not well suited to the types of customer interactions that the SEC seeks to regulate. For example, developing a regulatory approach that acknowledges the differences between engaging Main Street investors seeking a simple, low-cost solution for retirement and education savings, and investors seeking highly-customized investment solutions is critical to developing a workable regulatory framework. State Farm believes, however, additional guidance related to a broker-dealer's compliance with the best interest standard may be appropriate.

In addition to providing specific examples of scenarios in which a broker-dealer could be viewed as meeting its best interest obligation to retail customers, State Farm requests the SEC expressly indicate as part of any final rulemaking that, absent evidence of intent to the contrary, a broker-dealer's reasonable good faith efforts to comply with the Disclosure Obligations, Duty of Care, and Conflict of Interest Obligations will provide such broker-dealer with a safe harbor for compliance with the best interest obligation. Under such an approach, a broker-dealer would only be viewed as meeting its best interest obligation if, in connection with each recommendation to a retail customer, it takes reasonable steps to comply with the Disclosure Obligations, Duty of Care, and all aspects of the Conflict of Interest Obligations.

Such a safe harbor would provide broker-dealers with a workable standard and a level of certainty as to their ability to tailor their interactions with retail customers without being deemed to violate their best interest obligation. As drafted, however, a broker-dealer would be viewed as violating its best interest obligation with respect to a particular recommendation if it failed to take reasonable steps to meet any one of the Obligations.

C. State Farm agrees that the layered approach to disclosure (i.e., the Disclosure Obligation) may help clarify the capacity in which a broker-dealer or financial professional is acting.

Studies show that some degree of confusion may exist among a portion of investors about the duties owed to them by industry participants as well as the details of their relationship, including fees, with such participants.[2] One of the primary concerns identified in the SEC-commissioned 2008 RAND Study of investor perspectives was that retail investors are confused about the type of professional or firm that is providing them with investment services. Notwithstanding the foregoing, the study also indicated that investors are generally happy with services received from broker-dealers, and investors are not seeking a change in the manner in which broker-dealers conduct business. These are important points that should be fully considered by the SEC in connection with any final rulemaking.

The layered approach to disclosure (*i.e.*, the Disclosure Obligation under Regulation Best Interest, the Relationship Summary on Form CRS, and the Regulatory Status Disclosure) set forth in the proposing releases may help clarify the capacity in which a broker-dealer or financial professional is acting, may help minimize investor confusion, and may facilitate greater investor awareness of key aspects of a relationship with a firm or financial professional. This layered approach to disclosure would provide retail customers with meaningful and relevant disclosure at key points in the relationship with their broker-dealer in lieu of a static disclosure by means of a compulsory contract.

D. Comments Related to the Proposed Duty of Care

1. State Farm has developed a rigorous process, designed and implemented in accordance with FINRA's rules, to achieve its suitability goals for customers.

In offering products to customers, State Farm's goal is to match the customer with an investment option that meets his or her needs and objectives. In order to achieve this suitability goal, State Farm has developed a rigorous process, designed and implemented in accordance with FINRA's rules, to inform the customer of investment considerations so that he or she can choose the best option for his or her individual situation. The suitability assessment is initiated by the registered representative during the sales process. Information about the customer is gathered, including risk tolerance, time horizon, financial situation, investment experience, investment objectives, and other pertinent information. A suitability review is then performed to ensure the information gathered matches the investment product.

This suitability process has proven sound by protecting customers and providing them with valued education and options. To illustrate, even during periods of significant market volatility and crisis, State Farm's redemption ratio has been half that of the industry. In addition, complaint levels are extremely low. Well-defined regulatory expectations are essential to delivering a cost effective and consistent suitability process for customers. Automation relating to online resources and ease of transacting business with us, along with a training program, allow State Farm to

[2] *See, e.g.,* Angela A. Hung, et al, RAND Inst. For Civ. Just., INVESTOR AND INDUSTRY PERSPECTIVES ON INVESTMENT ADVISERS AND BROKER-DEALERS (the "RAND Study"), available at http://rand.org/pubs/technical_reports/TR556.html.

provide a consistent customer experience and for registered representatives to assist customers in their personal investment choices.

2. In the absence of an established definition under the federal securities laws, the SEC should remove the term "prudence" from the Care Obligation.

The Regulation Best Interest Release seeks comment regarding whether there is sufficient clarity and understanding of the meaning of the term "prudence", as it would be applied for purposes of the Care Obligation, or whether other terms might be more appropriate.

In light of the absence of an established definition of the term "prudence" under the federal securities laws, the Commission should strike the term from any final rulemaking. In the absence of a commonly-accepted definition of that term for purposes of the federal securities laws, it is likely the proposed formulation of the Care Obligation will lead to substantial uncertainty by investors, in the broker-dealer community and within the marketplace generally. Specifically, the absence of a definition of a key element of the Care Obligation will create, rather than eliminate, uncertainty for retail investors as well as broker-dealers regarding the scope of the best interest obligation. If the SEC retains the term "prudence" to convey a specific obligation of broker-dealers, the SEC should propose a definition of that term and provide an opportunity for public consideration and comment. The meaning of "prudence" for these purposes should not be left to be established through litigation and its attendant costs, lack of uniformity and uncertainty. Given its focus on serving individuals and families and small business, State Farm would strongly prefer to reduce, rather than increase, the costs of services to retail investors. The failure of the SEC to provide a safe harbor or other guidance to define the term "prudence" will only serve to increase consumer costs.

Relatedly, if the use of the term "prudence" is intended to convey a meaningful departure from existing standards of conduct, State Farm suggests the SEC make such deviation explicit in any final rulemaking to avoid the litigation and attendant uncertainty and costs discussed above.

3. Additional guidance is needed about when a broker-dealer would have a "reasonable basis" that a recommendation is in a retail customer's best interest.

State Farm requests the SEC provide additional guidance regarding the circumstances under which a broker-dealer would "have a reasonable basis for believing that the recommended transaction or investment strategy is in the best interest of the retail customer and does not put the financial or other interest of the broker-dealer before that of the retail customer" (the "Reasonable Basis Determination"). Although the Regulation Best Interest proposing release indicates the Care Obligation is intended to "incorporate and enhance existing suitability requirements applicable to broker-dealers," the release does not explain how a broker-dealer would comply with the Reasonable Basis Determination when only a limited range of investment products or securities are available from which to make recommendation(s) to a retail customer. For example, registered representatives of broker-dealers frequently are permitted to make recommendations based on a review of a limited number of investment products, including proprietary products. Under existing suitability obligations, a broker-dealer would not be required to consider the entire universe of available mutual fund families or variable annuity products when making a recommendation for a retail customer. The SEC should expressly state in any final rulemaking that a broker-dealer is not required to consider the entire universe of available products when making a recommendation to a retail customer.

State Farm assumes that similar interpretations would apply with respect to the Reasonable Basis Determination. To help reduce uncertainty within the brokerage community and the attendant costs of mitigating and/or developing case law related to such issues of interpretation, State Farm requests that the SEC consider expressly: (i) clarifying, in any final rulemaking, differences between existing suitability obligations and the Reasonable Basis Determination (if any) and (ii) providing examples of scenarios where a broker-dealer making recommendations from a limited universe of investment options would be viewed as satisfying the Reasonable Basis Determination. For example, the SEC should codify the remarks made by Brett Redfearn, Director, Division of Trading and Markets, at the 2018 FINRA Annual Conference related to the Care Obligation, including that: (i) broker-dealers do not need to "analyze all potential alternatives for the retail customer to find the best product available," (ii) the Care Obligation does not prohibit a recommendation from a limited range of products or recommendations of proprietary products, products from affiliates, and principal transactions, and (iii) the Care Obligation does not require a broker-dealer to default to recommending the least expensive or least remunerative security.

E. Comments Related to Conflicts of Interests

1. State Farm recommends the SEC consolidate the "General Conflict" and "Financial Incentive Conflict" categories or, in the absence of such consolidation, provide guidance about what types of conflict(s) would constitute "General Conflicts."

Any final rulemaking should consolidate the two categories of conflicts of interest identified by the Commission as two separate Conflict of Interest Obligations in proposed Rule 15l-1 – specifically, material conflicts of interest arising from retail customer recommendations generally (each, a "General Conflict") and those arising from financial incentives (each, a "Financial Incentive Conflict") – in favor of one obligation with respect to all material conflicts of interest. This recognizes that, generally, all material conflicts of interest of a broker-dealer when providing recommendations to retail investors have a financial aspect to them, and will not create investor confusion about when a conflict of interest can arise that is "material," but not based on a financial incentive.

Based on a plain reading of the proposed definition of a "material" conflict of interest (*i.e.*, whether a reasonable person would expect that the conflict of interest might incline a broker-dealer (consciously or unconsciously) to make a recommendation that is not disinterested), it is challenging to identify any material conflict of interest that is a General Conflict, but is not also a Financial Incentive Conflict. As a result, State Farm suggests any final rulemaking provide all material conflicts of interest be treated the same for purposes of Rule 15l-1. Accordingly, if State Farm's proposed approach is adopted, Regulation Best Interest would effectively require broker-dealers providing recommendations to retail customers to either eliminate or disclose and mitigate substantially all material conflicts of interest.

Absent further guidance from the SEC, State Farm believes the Conflict of Interest Obligations as proposed would significantly increase the regulatory and operational costs incurred and, potentially, the litigation risk and expenses for broker-dealers making recommendations to retail customers. Ultimately, these costs are borne by consumers. While State Farm is supportive of imposing a best interest standard on recommendations by broker-dealers to retail customers, the Conflict of Interest Obligations as set forth in the Regulation Best Interest Release would create unnecessary burdens on industry participants that could ultimately reduce the ability of many Americans to receive the services they need or desire.

Irrespective of whether the SEC determines that it is appropriate to treat General and Financial Incentive Conflicts similarly as part of any final rulemaking, State Farm believes the SEC, among other potential points of clarification, should, in any final rulemaking:

- Provide a definition for or examples of General Conflicts if General Conflicts and Financial Incentive Conflicts are not consolidated as part of any final rulemaking;

- Provide guidance about what causes a conflict of interest to be a Financial Incentive Conflict for conflicts not identified by the SEC as a financial incentive; and/or

- Provide additional guidance regarding those Financial Incentive Conflict(s) that would or would not require mitigation (for example, those Conflicts associated with the financial compensation of "associated persons" of the broker-dealer).

2. Providing greater guidance regarding the types of financial incentives that must be mitigated and clarifying whether this Conflict of Interest Obligation permits disclosure and mitigation in lieu of elimination of certain Financial Incentive Conflicts is needed to help ensure compliance by broker-dealers.

The SEC stated in the Regulation Best Interest Release that disclosure may not be sufficient in the case of Financial Incentive Conflicts and that broker-dealers may be required to mitigate or eliminate such conflicts of interest. The Commission further noted types of financial incentives, such as differential compensation, that may be difficult, if not impossible, to effectively manage through disclosure alone, or to eliminate. The SEC should provide greater guidance regarding the types of financial incentives that must be mitigated and clarify whether this Conflict of Interest Obligation permits disclosure and mitigation in lieu of elimination of certain Financial Incentive Conflicts.

3. As part of such guidance, an exemption from the definition of Financial Incentive Conflict is needed in certain circumstances where a broker-dealer is able to mitigate and/or eliminate a Financial Incentive Conflict with respect to registered representatives but not with respect to the broker-dealer to help ensure compliance by the broker-dealer with its obligations under Regulation Best Interest.

It is not uncommon for a broker-dealer to make recommendations to retail customers in respect of third-party mutual funds. Under such circumstances, the broker-dealer would typically receive a sales load with respect to the sale of such funds and, provided appropriate arrangements are in effect, may also receive revenue sharing payments associated with such sales. Sales loads are routinely established by the fund family without input from the brokerage community and revenue sharing arrangements, although subject to negotiation by a broker-dealer, often vary across fund families sold through a particular broker-dealer. In each of these instances, it is likely that the SEC could identify a Financial Incentive Conflict which, under the proposal, would be required to be mitigated or eliminated.

For a variety of reasons – including the inability of the broker-dealer to levelize compensation received by the firm (either in the form of sales loads or revenue sharing payments) – it is frequently not possible to eliminate all conflicts arising in such circumstances. Instead, it may be possible for a broker-dealer to seek to equalize the compensation payable to individual registered representatives of the broker-dealer across all financial products (*i.e.*, irrespective of the

product or product manufacturer). In such instances, any Financial Incentive Conflict with respect to the individual registered representatives would be effectively mitigated or eliminated.

Nevertheless, an argument could be made that under these circumstances, the Financial Incentive Conflict would not be mitigated or eliminated at the broker-dealer level and, as a result, the firm would fail to satisfy its obligations under Regulation Best Interest. Accordingly, as part of any final rulemaking, the SEC should:

- Exempt the foregoing circumstances from a Financial Incentive Conflict (both at the broker-dealer and registered representative level);

- Specify that a broker-dealer does not violate the Conflict of Interest Obligation if it does not take any action, directly or indirectly, to incentivize sales of higher-compensation products by registered representatives to the detriment of lower-compensation products; and

- State that the above-referenced remedial actions effectively mitigate the potential Financial Incentive Conflict presented at both the broker-dealer and registered representative level.

4. State Farm requests that non-cash compensation not be prohibited under any final rulemaking.

The SEC asks whether non-cash compensation should be prohibited. State Farm does not believe that non-cash compensation should be prohibited. As with all forms of compensation paid by broker-dealers to their registered representatives, the key aspect of these reward programs is that the broker-dealer establish and enforce policies and procedures to restrict the use of sales targets, monitor for potential red flags, such as changes in sales activities, and otherwise manage conflicts of interest. For example, in the case of travel credits, awards should be tied to total production and not the number or types of products sold. Accordingly, as with cash compensation, non-cash compensation should be similar across products so that registered representatives are not incentivized to sell particular products or to meet certain sales thresholds, *e.g.*, through sales contests. It should be noted that non-cash sales incentives can help raise consumer awareness of the need to save and invest. Whether a consumer does so is his or her choice.

F. State Farm supports the SEC's conclusion in the Best Interest Release that Regulation Best Interest does not create a potential private right of action.

In the Regulation Best Interest Release, the SEC stated that it does not believe that Regulation Best Interest would create any new private right of action or right of rescission and that the Commission does not intend such result. The Commission further states that "[n]either Section 913(f) [of the Dodd-Frank Act] nor Section 15(l) [of the Securities Exchange Act of 1934], by its terms, creates a new private right of action or right of rescission."

State Farm supports the SEC's conclusion that Regulation Best Interest does not create a new private right of action. In light of the complexity and novelty of the obligations and requirements set forth in Regulation Best Interest, the SEC, rather than a state or federal court, is best positioned to interpret and develop a body of precedent relative to the interpretation and application of Regulation Best Interest. Further, it is possible that federal or state courts in different jurisdictions could reach different conclusions related to the nature or scope of a firm's obligations

under Regulation Best Interest. Such a divergence of legal authority would lead to substantial uncertainty among investors, the broker-dealer community, and within the marketplace more generally. Further, such divergence of authority would unnecessarily increase a broker-dealer's regulatory compliance cost and operational uncertainty by subjecting broker-dealers with operations in multiple U.S. jurisdictions, such as State Farm, to varying legal regimes and requirements. All to the detriment of consumers and as discussed elsewhere in this letter, such regulatory and operational uncertainty could be expected to primarily harm low and moderate income consumers – those Main Street investors most in need of sound retirement and educational savings guidance.

III. FORM CRS – CLIENT RELATIONSHIP SUMMARY

Although State Farm supports the provision of Relationship Summaries to retail customers and clients, additional clarification regarding certain elements of proposed Form CRS is needed prior to the adoption of any final rules.

A. State Farm requests that the SEC consider certain recommendations related to Relationship Summary page limit.

In the Form CRS Release, the SEC asks a number of questions related to its proposal to limit a Relationship Summary to four pages (or equivalent limit if in electronic format) (the "Page Limit"). State Farm, on behalf of its customers, appreciates the proactive steps the SEC is taking to provide easy-to-use disclosures to help support retail investor engagement with their chosen broker-dealer and/or investment adviser.

To mitigate potential investor confusion and to reduce the risk of inadvertent violations of the federal securities laws by broker-dealers and investment advisers who intend to make full disclosure, but are foreclosed by the Page Limit, State Farm recommends the SEC, as part of any final rulemaking:

(i) State that only "material" conflicts of interest need be disclosed;

(ii) For any Relationship Summary Items requiring a firm to prepare narrative disclosure, provide express guidance about the impact of the "layered" disclosure approach on the nature and scope of required disclosures (including to avoid presenting disclosures that are materially inaccurate or misleading) in a Relationship Summary; and/or

(iii) Exclude from the Page Limit the list of key questions for retail investors to ask a firm's financial professional(s).

With respect to the first (i) recommendation above the SEC should provide guidance about when a Relationship Summary would be viewed as materially misleading or inaccurate in isolation or in light of the documents incorporated or hyperlinked thereto (voluntarily or as required by the Instructions to Form CRS). If (i) the accuracy of a Relationship Summary and/or (ii) the assessment of whether a Relationship Summary would not be viewed as being materially misleading can be viewed in light of the total package of information hyperlinked to or incorporated by reference to the Relationship Summary, State Farm would urge the SEC to make that interpretation explicit in any final rulemaking.

B. Permitting broker-dealers and investment advisers to either utilize Form CRS or develop their own disclosure forms containing substantially similar content to Form CRS would provide the flexibility needed to tailor the disclosure to retail investors.

As an alternative to the Relationship Summary detailed in the Form CRS Release, State Farm suggests that the SEC, as part of any final rulemaking, adopt a two-pronged approach to delivering relevant information to retail investors. Under this approach, a broker-dealer or investment adviser would be permitted to either (i) rely on Form CRS in preparing the firm's Relationship Summary (which such reliance would provide the firm a safe harbor for compliance with its obligation to deliver a Relationship Summary) or (ii) develop its own Relationship Summary, the contents of which would be substantially similar to the topics required under Form CRS (though such disclosures may appear in a different order and/or may not reflect the prescribed wording for various concepts under Form CRS). State Farm believes that this hybrid approach for preparing a firm's Relationship Summary would significantly mitigate the concerns with respect to Form CRS and a Relationship Summary described in the immediately preceding section by providing investment advisers and broker-dealers with flexibility to tailor the disclosure to the retail investor.

Due to the variety of broker-dealer business models, State Farm believes it is important for the SEC to provide some flexibility regarding disclosure so as not to influence investor choice or indirectly endorse particular business models. A hybrid approach is particularly important to limited purpose broker-dealers that offer a limited range of products (*e.g.*, State Farm, offers only a limited range of products (*i.e.*, mutual funds, variable products, and 529 plans) as it will allow broker-dealers to provide a Relationship Summary that is reflective of its business activities and meaningful to its customers.

C. Although State Farm supports the SEC's proposed flexible standard for initially delivering a "Relationship Summary," the proposed delivery requirements may be unworkable under existing account opening processes.

State Farm supports the SEC's proposed flexible standard for initially delivering a relationship summary ("Form CRS") to a retail investor (the "RS Delivery Requirement"). The RS Delivery Requirement – under which a broker-dealer or investment adviser must provide a retail investor a Form CRS before or at the time a retail investor first engages the firm's services – may, in its current formulation cause unnecessary regulatory and operational uncertainty for broker-dealers and investment advisers and confusion.

The RS Delivery Requirement as applied to broker-dealers, including dually-registered broker-dealers and investment advisers, fails to account for the practical realities of establishing a new customer relationship. As proposed, a broker-dealer would be required to deliver a Form CRS at or before the time a retail investor first engages the broker-dealer. In the Form CRS proposing release, the SEC suggests a linear progression under which a retail investor first examines one or more broker-dealers, decides to open an account with a particular firm, and then receives and acts upon recommendations from its registered representative. In practice, the customer onboarding process rarely progresses in such a linear fashion – the foregoing steps may or may not be completed within a single meeting and, in many cases, a particular investment recommendation may precede the retail investor's decision to retain a particular financial services firm.[3] The

[3] *See* Section III.D. for additional information regarding client onboarding mechanics.

sequence is exacerbated in the case of a dual-hatted representative who provides a recommendation to a customer in her capacity as a registered representative, but also offers the client the opportunity to open an advisory account with an affiliated investment adviser. State Farm believes that the RS Delivery Requirement, as proposed, may fail to provide meaningful disclosure that will help retail investors select from among brokerage or investment advisory accounts and services. Accordingly, the SEC should revise the delivery requirements set forth in the Form CRS Release to clarify that Form CRS:

- Must be delivered by a broker-dealer no later than the time a retail investor firm engages the broker-dealer's services, but that delivery of a Relationship Summary immediately preceding the time the broker-dealer delivers an investment recommendation would be deemed to satisfy the broker-dealer's delivery requirement with respect to new retail investors; and

- Must be delivered by a dual-registrant at the earlier of delivering an investment recommendation or the time a retail investor opens an account with the firm.

D. Relationship Summary requirements for investment advisers.

With respect to investment advisers' obligation to deliver Form CRS, State Farm believes that investment advisers should be required to include in their Relationship Summaries only those disclosures that are not otherwise available (provided that a representative heading or introductory statement and a hyperlink to such disclosures are provided in the Relationship Summary). This would be consistent with proposed instructions to Form CRS which would require firms to "include cross-references to where investors could find additional information, such as in the Form ADV Part 2 brochure and brochure supplement for investment advisers or on the firm's website or in the account opening agreement for broker-dealers."

E. Affiliated broker-dealers and investment advisers.

In the Form CRS Release, the SEC did not provide a template or otherwise discuss whether affiliated broker-dealers and investment advisers can use blended or combined Forms CRS. There are certain circumstances where disclosure would be more meaningful to retail investors if affiliated broker-dealers and investment advisers are permitted to provide a combined Form CRS much in the way that a dually-registered broker-dealer and investment adviser provides one Form CRS. In particular, State Farm believes a combined Form CRS would be appropriate if the broker-dealer and investment adviser offer the same range of products. Other elements of disclosure that are specific to the broker-dealer or investment adviser, such as fees and standard of conduct, would still be separately disclosed.

IV. LABELING RULE

A. Use of the terms "adviser" and "advisor" by broker-dealers and their associated natural persons should not be restricted.

State Farm requests the SEC, as part of any final rulemaking, remove the requirement that financial professionals be prohibited from using the terms "adviser" or "advisor" in certain circumstances (the "Labeling Rule"). In support of its Labeling Rule proposal, the SEC cites retail investor confusion regarding the regulatory regimes and business models under which investment advisers and broker-dealers provide investment advice or recommendations to retail investors. In

light of this confusion, the SEC, in the Form CRS Release, stated that "it is vital that retail investors understand whether the firm is a registered investment adviser or registered broker-dealer, and whether the individual providing services is associated with one or the other (or both), so that retail investors can make an informed selection of their financial professional." State Farm does not dispute, in this letter, the SEC's conclusion that it is possible that retail investors may experience confusion regarding the standard of conduct owed to such investor by an investment adviser or a broker-dealer. However, State Farm strongly disagrees with the SEC's conclusion that "Form CRS is not a complete remedy for investor confusion."

State Farm believes that the layered approach to disclosure set forth in the Form CRS Release, including through required disclosures on Form CRS (or other similar document), provide an effective mechanism for conveying the standard of conduct owed by a broker-dealer or investment adviser to its retail clients. Specifically, a prohibition on certain express terminology (rather than a principles-based approach for restricting titles conveying a connotation of services provided or applicable standards of conduct), by itself, is unlikely to ensure that retail investors are aware of the standard of conduct owed by their investment adviser or registered representative. Moreover, as noted in the Form CRS Release, the Commission does not propose to eliminate the use of the terms "adviser" or "advisor" by associated persons of a broker-dealer when acting on behalf of a bank or insurance company, or when acting on behalf of a commodity trading advisor or municipal advisor, or to prohibit the use of other titles, such as financial consultant. In fact, State Farm believes that any utility achieved by the Labeling Rule would quickly dissipate as broker-dealers transition to new terminology – for example, "manager" or use titles not banned by the SEC, such as "financial consultant."

State Farm believes that the SEC's focus on titles is somewhat form over substance, and will not address retail investors' understanding of the scope of services provided and duties owed by their financial professional. The better tool for addressing investor confusion is disclosure, such as proposed under Regulation Best Interest and in Form CRS. It is important to recognize that retail investor confusion regarding the standard of conduct owed by an investment adviser or broker-dealer arose in a context where retail investors were provided limited information (as compared with the Form CRS Proposal) in advance of retaining a broker-dealer or investment adviser. Accordingly, State Farm believes that disclosure, such as the proposed Relationship Summary, would provide retail investors with meaningful, readily-accessible information regarding the standard of conduct owed to them by broker-dealers and investment advisers, respectively. Perhaps more importantly, disclosure, unlike the Labeling Rule, would better position retail investors to understand the standard of conduct owed to them – alleviating many of the drivers of retail investor confusion.

B. If the SEC restricts the use of the terms "adviser" and "advisor," such restriction should not apply to certain dual-hatted registered representatives.

To the extent that the SEC declines to remove the Labeling Rule from any final rulemaking, State Farm does not believe that the use of "advisor" or "adviser" by Dual-Hatted Persons should be limited only to circumstances when such person is providing investment advice on behalf of the investment adviser. Rather, the SEC should expressly state, as part of any final rulemaking, that a Dual-Hatted Person would be permitted to use the term "advisor" or "adviser" in all interactions with retail investors, irrespective of whether such Dual-Hatted Professional is providing investment advisory or brokerage services to a particular retail investor in a particular interaction; provided that the Dual-Hatted Person provides plain-English disclosure of the capacity in which he or she is acting and the scope of services provided.

Requiring a Dual-Hatted Person to switch back and forth between titles based on whether he or she is making a recommendation through the broker-dealer or providing investment advice through the investment adviser would increase confusion for retail investors. The SEC's proposed approach does not reflect the relationships State Farm's registered representatives establish with retail investors in their community and ignores the significant amount of disclosure the SEC is proposing to require of broker-dealers and investment advisers to make regarding the customer's relationship with the firm. Such restriction also ignores what the SEC has acknowledged, which is that many retail investors select financial professionals and firms based on personal referrals by family, friends, or colleagues, without necessarily focusing on such person's title.

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We appreciate the opportunity to provide these comments and your consideration. Please feel free to contact me if you should have any questions.

Sincerely,

Stephen McManus, Senior Vice President and General Counsel
State Farm Mutual Automobile Insurance Company